

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 523.

THE UNITED STATES OF AMERICA, PLAINTIFF IN
ERROR,

vs.

BOZE YUGINOVICH AND COUSIN BOZE YUGINOVICH.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF OREGON.

FILED SEPTEMBER 2, 1921.

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a IN THE SUPREME COURT OF THE UNITED STATES.

The United States of America, plaintiff in error,
vs.

Boze Yuginovich and Boze Yuginovich (indicted as Boze Yuginni
and Cousin Boze Yuginni), defendants in error.

Names and addresses of the attorneys of record.

Mr. Lester W. Humphreys, United States attorney, and Mr. Austin F. Flegel, jr., assistant United States attorney, 304 Old Post Office Building, Portland, Oregon, for the plaintiff in error.

Mr. Barnett H. Goldstein, 1110 Wilcox Building, Portland, Oregon, for the defendants in error.

1 IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

BOZE YUGINOVICH AND COUSIN BOZE YUGINOVICH,
indicted as Boze Yuginni and Cousin Boze Yuginni,
defendants in error.

At law.

No. C.-8905.

United States of America to Boze Yuginovich and Cousin Boze Yuginovich, greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States to be holden in the city of Washington, within sixty days from the date hereof, to-wit: On or before the 24th day of September next, pursuant to a writ of error filed in the office of the clerk of the District Court of the United States for the District of Oregon, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against plaintiff in error, as in said writ of error mentioned ought not to be corrected and speedy justice be done to the parties in that behalf.

Given under my hand in the city of Portland, in the State of Oregon, the 26th day of July, in the year of our Lord one thousand nine hundred twenty.

R. S. BEAN,

*Judge of the District Court of the United States
for the District of Oregon.*

2 UNITED STATES OF AMERICA,

District of Oregon, ss:

Due, legal, and timely service of the within notice is hereby acknowledged by receipt by me of copy thereof this 26th day of July, 1920, at Portland, Oregon.

BARNETT H. GOLDSTEIN,

Attorney for Defendants in Error.

3 (Indorsed:) No. e-8905. 28-94. In the District Court of the United States for the District of Oregon. United States of America vs. Boze Yuginovich and Cousin Boze Yuginovich, at law, No. C 8905. U. S. District Court, District of Oregon. Filed July 27, 1920. G. H. Marsh, clerk.

4 In the Supreme Court of the United States of America.

United States of America, plaintiff in error, vs. Boze Yuginovich and Cousin Boze Yuginovich, indicted as Boze Yuginni and Cousin Boze Yuginni, defendants in error.

Writ of error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the District Court of the United States for the District of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the district court before the Honorable R. S. Bean, one of you, between United States of America, plaintiff and plaintiff in error, and Boze Yuginovich and Cousin Boze Yuginovich, defendants and defendants in error, a manifest error has happened to the great damage of the said plaintiff in error, as by petition doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington within sixty days from the date hereof, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

5 Witness the honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 26th day of July, 1920.

[SEAL.]

G. H. MARSH,
*Clerk of the District Court of the
United States for the District of Oregon.*

Allowed by—

R. S. BEAN,
United States District Judge.

6 (Indorsed:) In the District Court of the United States for the District of Oregon. United States of America vs. Boze

Yuginovich and Cousin Boze Yuginovich. At law, No. C 8905. Writ of error.

7 In the District Court of the United States for the District of Oregon.

March term, 1920.

Be it remembered that on the 18th day of June, 1920; there was duly filed in the District Court of the United States for the District of Oregon an indictment in words and figures as follows, to wit:

8 In the District Court of the United States for the District of Oregon.

United States of America vs. Boze Yuginni and Cousin Boze Yuginni, defendants.

Indictment for violation of sections 3257, 3279, 3281, and 3282, United States Revised Statutes.

UNITED STATES OF AMERICA,
District of Oregon, ss:

The grand jurors of the United States of America for the district of Oregon, duly impaneled, sworn, and charged to inquire within and for said district, upon their oaths and affirmations do find, charge, allege, and present:

Count one.

That Boze Yuginni and Cousin Boze Yuginni, the defendants above named, on, to wit, the 23rd day of April, 1920, three miles east of Boring, in the State and district of Oregon, and within the jurisdiction of this court, did feloniously, knowingly, and unlawfully engage in carrying on the business of distillers—that is to say, distillers of distilled spirits, to wit, spirituous liquors, within the intent and meaning of the internal-revenue laws of the United States—and while so engaged as aforesaid did then and there distill a large quantity of spirits, the exact quantity and amount thereof being to the grand jurors unknown, then and there subject to the internal-revenue tax then imposed by law upon distilled spirits; and that the said Boze Yuginni and Cousin Boze Yuginni, the defendants aforesaid, did then and there feloniously, unlawfully, and knowingly defraud and attempt to defraud the said United States of the said tax on the said spirits so by them distilled as aforesaid, contrary to the form of the statute in such case made and provided and
9 ' against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

Count two.

That Boze Yuginni and Cousin Boze Yuginni, the defendants aforesaid, on, to wit, the 23rd day of April, 1920, three miles east of Boring, in the State and district of Oregon, and within the jurisdiction of this court and within the internal revenue collection district of Oregon, did unlawfully, knowingly, wilfully, and feloniously fail to place and keep conspicuously, or at all, on the place of business conducted by them, the said defendants; that is to say, a business, to wit, a distillery for the production of spirituous liquor, any sign exhibiting in plain and legible letters, or at all, the name or firm of the distiller with the words "Registered Distillery" as required by law; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

Count three.

That Boze Yuginni and Cousin Boze Yuginni, the defendants aforesaid, on, to wit, 23rd day of April, 1920, three miles east of Boring, in the State and district of Oregon, and within the jurisdiction of this court and within the internal revenue collection district of Oregon, did wilfully, knowingly, unlawfully, and feloniously carry on the business of distillers within the intent and meaning of the internal revenue laws of the United States without
10 having given bond as required by law; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further find, charge, allege, and present:

Count four.

That Boze Yuginni and Cousin Boze Yuginni, the defendants aforesaid, on, to wit, the 23rd day of April, 1920, three miles east of Boring, in the State and district of Oregon, and within the jurisdiction of this court, did willfully, knowingly, unlawfully, and feloniously make and ferment a certain mash, fit for distillation, a more particular description of the quantity and quality of the mash being to the grand jurors unknown, in a certain building not then and there a distillery duly authorized according to law; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 18th day of June, 1920.

A true bill.

P. A. YOUNG,

Foreman, United States Grand Jury.

AUSTIN F. FLEGEL, Jr.,

Assistant United States Attorney.

(Indorsed:) A true bill, P. A. Young, foreman grand jury. Filed in open court June 18, 1920, G. H. Marsh, clerk. Austin F. Flegel, jr., assistant United States attorney.

11 And afterwards, to wit, on Thursday, the 1st day of July, 1920, the same being the 106th judicial day of the regular March, 1920, term of said court; present the honorable Robert S. Bean, United States District judge, presiding, the following proceedings were had in said cause, to wit:

12 In the District Court of the United States for the District of Oregon.

The United States of America vs. Boze Yuginni and Cousin Boze Yuginni. No. C-8905. July 1, 1920.

Indictment: Sections 3257, 3279, 3281, and 3282 R. S. U. S.

Now at this day come the plaintiff by Mr. A. F. Flegel, jr., assistant United States attorney, and the defendants above named each in his own proper person and by Mr. Barnett H. Goldstein, of counsel. Whereupon said defendants being duly arraigned upon the indictment herein each for himself states to the court that his true name is Boze Yuginovich. And thereupon said defendants file a motion herein to quash the indictment, and demurrer to the defendant, and plea of former jeopardy. Whereupon upon motion of said plaintiff

It is ordered that this cause be and the same is hereby set for hearing upon said motion and demurrer for Tuesday, July 6, 1920.

13 And afterwards, to wit, on the 1st day of July, 1920, there was duly filed in said court, a motion to quash indictment, in words and figures as follows, to-wit:

14 In the District Court of the United States for the District of Oregon.

United States of America, plaintiff, vs. Boze Yuginni and Cousin Boze Yuginni, defendants.

Motion to quash indictment.

Comes now the defendants herein, and each of them, by their attorney, Barnett H. Goldstein, and move that all of the counts in this indictment be quashed, on the ground and for the reason:

I.

That the laws of Congress, under which the said indictment was found and returned, have been and were, prior to the finding of this indictment, repealed, and that the said acts of Congress, hereinafter mentioned, were, prior to the finding of the said indictment,

inoperative and of no force and effect whatsoever, and in this behalf the said defendants allege:

(a) That the acts charged in the indictment are alleged to have been committed subsequent to the 17th day of January, 1920, on which date the Eighteenth Amendment to the Constitution of the United States and the statute of October 28, 1919 (National Prohibition Act), enforcing that amendment, took effect.

(b) That the said statutes last indicated are inconsistent with sections 3257, 3279, 3281, and 3282 of the Revised Statutes of the United States and therefore supersede and repeal the same.

Wherefore, the defendants move that the indictment herein be quashed.

BARNETT H. GOLDSTEIN,
Attorney for defendants.

15 UNITED STATES OF AMERICA, *District of Oregon, County of Multnomah, ss:*

I, Barnett H. Goldstein, do hereby certify that I have prepared the foregoing motion to quash, and that the same is filed in good faith and not for the purpose of delay, and in my opinion same is well founded in the law.

BARNETT H. GOLDSTEIN,
Attorney for Defendants.

STATE OF OREGON, *County of ———, ss:*

Due, timely, and legal service by copy admitted at ——— this 1 day of July, 1920.

AUSTIN F. FLEGEL, Jr.,
Attorney for ———.

Filed July 1, 1920. G. H. Marsh, clerk.

16 And afterwards, to wit, on the 1st day of July, 1920, there was duly filed in said court a demurrer to indictment in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon.

United States of America, plaintiff, vs. Boze Yuginni and cousin,
Boze Yuginni, defendants.

Demurrer to indictment.

Come now the defendants and demur to the indictment herein filed against them and each of them, as follows:

I.

Demur to counts one, two, three, and four of the said indictment, and to all of them, for the reason that sections 3257, 3279, 3281, and 3282 of the Revised Statutes of the United States, upon which they

are respectively based, are in conflict with and have been superseded and repealed by the eighteenth amendment to the Constitution of the United States and the statute of October 28, 1919 (national prohibition act), which became operative January 17, 1920, prior to the date of the alleged commission of the acts charged in this indictment.

II.

That none of said counts state facts sufficient to constitute a crime against the laws of the United States or to charge a crime against the said defendants or either of them.

BARNETT H. GOLDSTEIN,
Attorney for Defendants.

18 UNITED STATES OF AMERICA,
District of Oregon, County of Multnomah, ss:

I, Barnett H. Goldstein, do hereby certify that I have prepared the foregoing demurrer and that the same is filed in good faith and not for the purpose of delay and in my opinion same is well founded in the law.

BARNETT H. GOLDSTEIN,
Attorney for defendants.

STATE OF OREGON,
County of ———, ss:

Due, timely, and legal service by copy admitted at ——— this 1 day of July, 1920.

AUSTIN F. FLEGEL, JR.,
Attorney for ———.

Filed July 1, 1920. G. H. Marsh, clerk.

19 And afterwards, to-wit, on Monday, the 12th day of July, 1920, the same being the 7th judicial day of regular July, 1920, term of said court; present the Honorable Robert S. Bean, United States district judge, presiding, the following proceedings were had in said cause, to-wit:

20 In the District Court of the United States for the District of Oregon.

The United States of America vs. Boze Yuginovich and Cousin Boze Yuginovich (indicted as Boze Yuginni and Cousin Boze Yuginni). No. C-8905. July 12, 1920.

Indictment: Sections 3257, 3279, 3281, and 3282, R. S. U. S.

This cause was heard by the court upon the motion of the defendants to quash the indictment herein, and the demurrer of said defendants to the indictment, and was argued by Mr. A. F. Flegel, jr., assistant United States attorney, and Mr. Barnett H. Goldstein, of counsel for said defendants. Upon consideration whereof

It is ordered that said motion be and the same is hereby allowed, and that said demurrer be and the same is hereby sustained; and

It is further ordered that said defendants go hence without day, and that the sureties upon their recognizance be and they are hereby exonerated from further liability in this behalf.

21 And afterwards, to wit, on the 12th day of July, 1920, there was duly filed in said court an opinion of the court, in words and figures as follows, to wit:

22 In the District Court of the United States for the District of Oregon.

United States, complainant, vs. Boze Yuginni and Cousin Boze Yuginni, defendants.

Portland, Oregon, July 13, 1920.

R. S. BEAN, D. J. (oral).

In the case of United States vs. Yuginni there are two defendants indicted for a violation of the internal revenue act. They are charged with engaging in the business of a distiller without having paid the tax required by the statute, and without having exhibited the sign of a registered distillery and without giving a bond, as required by the revenue act.

Demurrer has been filed and motion to quash the indictment on the ground that it appears from the face of the indictment that the alleged crime was committed after the national prohibition act went into effect. It is argued that this act was intended by Congress to cover the entire subject of the manufacture and sale of intoxicating liquors, and that it is inconsistent with the revenue act which provides for the levying of a tax upon distilleries and upon the liquor manufactured at such places.

The prohibition act is very comprehensive. It provides that no person shall on or after the date when the eighteenth amendment goes into effect manufacture, sell, barter, import, export, deliver, furnish, or possess any liquor except as authorized in this act, and then provides for the issuance of permits to manufacture liquor of certain grades and quality, provides the method of its manufacture, the labelling of the packages, the disposition of the liquor. It is intended, as I take it, to cover the entire subject, and in my judgment supersedes and operates as a repeal of the previous act governing the operation of distilleries.

23 It is true section 35 of the prohibition act provides that it shall not relieve anyone from paying any tax or other charges imposed upon the manufacture or traffic in liquor, and also provides that there shall be exacted and collected of any person responsible for the illegal manufacture or sale in double the amount now provided by law, with an additional penalty of \$500.00 on retailers and \$1,000.00 on manufacturers.

It would seem therefore that Congress intended that one who manufactured liquor in violation of the prohibition act should nevertheless be liable for the tax thereon. In that event, however, it

seems to me such a manufacturer must be proceeded against under the prohibition act and not the revenue statute.

This conclusion is in harmony with that arrived at in United States vs. Windham (264 Fed. 326). The reasoning of the opinion in that case appeals to me as sound.

The motion to quash will be allowed.

Filed July 23, 1920, as for July 12, 1920. G. H. Marsh, clerk.

24 And afterwards, to wit, on the 26th day of July, 1920, there was duly filed in said court, a petition for writ of error, in words and figures as follows, to wit:

25 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

BOZE YUGINOVICH AND COUSIN BOZE YUGINOVICH,
indicted as Boze Yuginni and Cousin Boze
Yuginni, defendants.

At law. No. C—
8905.

Petition for writ of error.

Comes now the United States of America, plaintiff herein, by Austin F. Flegel, jr., assistant United States attorney for Oregon, and says that on the 12th day of July, 1920, the District Court above entitled entered judgment herein in favor of the defendants and against this plaintiff, in which judgment and proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

AUSTIN F. FLEGEL, Jr.,

Attorney for Plaintiff in Error.

26 UNITED STATES OF AMERICA,

District of Oregon, ss:

Due, legal, and timely service of the foregoing petition for writ of error, by receipt by me of copy thereof, duly certified to by Austin F. Flegel, jr., assistant United States attorney for the District of Oregon, is hereby admitted at Portland, Oregon, this 26th day of July, 1920.

BARNETT H. GOLDSTEIN,

Attorney for Defendant in Error.

Filed July 26, 1920. G. H. Marsh, clerk.

27 And afterwards, to wit, on the 26th day of July, 1920, there was duly filed in said court, an assignment of errors, in words and figures as follows, to wit:

10 UNITED STATES VS. BOZE YUGINOVICH AND COUSIN.

28 In the District Court of the United States for the District
of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

BOZE YUGINOVICH AND COUSIN BOZE YUGINOVICH,
indicted as Boze Yuginni and Cousin Boze
Yuginni, defendants in error.

At law. No. C-
8905.

Assignment of errors.

The plaintiff in this action in connection with its petition for writ of error makes the following assignment of errors, which plaintiff avers exist:

I.

The court erred in sustaining the demurrer of the defendants to the indictment in the above entitled cause.

II.

The court erred in allowing defendants' motion to quash indictment in the above entitled cause.

III.

The court erred in dismissing the indictment in the above entitled cause.

IV.

The court erred in holding that the national prohibition act supercedes and operates as a repeal of sections 3257, 3279, 3281, and 3282 of the Revised Statutes of the United States.

V.

The court erred in not holding that the intent, purpose, and effect of section 35, title 2, of the national prohibition act is to continue in full force and effect sections 3257, 3279, 3281, and 3282 of the Revised Statutes of the United States and to prevent a repeal of the same.

29

VI.

The court erred in holding that the national prohibition act is inconsistent with section 3257 of the Revised Statutes of the United States and, therefore, operates as a repeal of said section 3257 aforesaid.

VII.

The court erred in holding that the national prohibition act is inconsistent with section 3279 of the Revised Statutes of the United States and, therefore, operates as a repeal of said section 3279 aforesaid.

VIII.

The court erred in holding that the national prohibition act is inconsistent with section 3281 of the Revised Statutes of the United States and, therefore, operates as a repeal of said section 3281 aforesaid.

IX.

The court erred in holding that the national prohibition act is inconsistent with section 3282 of the Revised Statutes of the United States and, therefore, operates as a repeal of said section 3282 aforesaid.

X.

The court erred in holding and adjudging that the indictment in the above entitled cause did not state facts sufficient to constitute an offense against the peace and dignity of the United States and did not constitute a valid indictment against the defendants herein and each of them.

AUSTIN F. FLEGEL, Jr.,
Attorney for Plaintiff in Error.

30 UNITED STATES OF AMERICA, *District of Oregon, ss:*

Due, legal, and timely service of the foregoing assignment of errors, by receipt of copy thereof, duly certified to by Austin F. Flegel, jr., assistant United States attorney for the district of Oregon, is hereby admitted at Portland, Oregon, this 26th day of July, 1920.

BARNETT H. GOLDSTEIN,
Attorney for Defendant in Error.

Filed July 26, 1920. G. H. Marsh, clerk.

31 And afterwards, to wit, on Monday, the 26th day of July, 1920, the same being the 19th judicial day of the regular July term of said court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

12 UNITED STATES VS. BOZE YUGINOVICH AND COUSIN.

32 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

BOZE YUGINOVICH AND COUSIN BOZE YUGINOVICH,
indicted as Boze Yuginni and Cousin Boze
Yuginni, defendants in error.

No. C-8905.

Order allowing writ of error.

On this 26th day of July, 1920, the United States of America, the above-named plaintiff in error, by Austin F. Flegel, jr., assistant United States attorney for the district of Oregon, presented to the court its petition praying for the allowance of writ of error in the above-entitled cause and presenting assignment of error intended to be urged by plaintiff and praying also that transcript of record, proceedings, and papers upon which judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other proceedings may be had as are proper in the premises.

Now, therefore, in consideration thereof the court does allow the writ of error as prayed for in petition of plaintiff.

R. S. BEAN,

United States District Judge.

33 UNITED STATES OF AMERICA,

District of Oregon, ss:

Due, legal, and timely service of the foregoing order allowing writ of error, by receipt by me of copy thereof, duly certified to by Austin F. Flegel, jr., assistant United States attorney for the district of Oregon, is hereby admitted at Portland, Oregon, this 26th day of July, 1920.

BARNETT H. GOLDSTEIN,

Attorney for Defendant in Error.

Filed July 26, 1920. G. H. Marsh, clerk.

34 And afterwards, to wit, on the 26th day of July, 1920, there was duly filed in said court a writ of error from the Supreme Court of the United States in words and figures as follows, to wit:

35 In the Supreme Court of the United States of America.

United States of America, plaintiff in error, vs. Boze Yuginovich and Cousin Boze Yuginovich, indicted as Boze Yuginni and Cousin Boze Yuginni, defendants in error.

Writ of error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the District Court of the United States for the District of Oregon, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the

Honorable R. S. Bean, one of you, between United States of America, plaintiff and plaintiff in error, and Boze Yuginovich and Cousin Boze Yuginovich, defendants and defendants in error, a manifest error has happened, to the great damage of the said plaintiff in error, as by petition doth appear; and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, and in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington within sixty days from the date hereof, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

36 Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 26th day of July, 1920.

[Seal of the U. S. District Court, District of Oregon.]

G. H. MARSH,
*Clerk of the District Court of the United
States for the District of Oregon.*

Allowed by R. S. Bean, United States District Judge.

Filed July 26, 1920. G. H. Marsh, clerk, United States District Court, District of Oregon.

37 And afterwards, to wit, on the 30th day of July, 1920, there was duly filed in said court a præcipe for transcript of record on writ of error, in words and figures as follows, to wit:

38 In the District Court of the United States for the District of Oregon.

United States of America vs. Boze Yuginovich and Cousin Boze Yuginovich, indicted as Boze Yuginni and Cousin Boze Yuginni, defendants.

Præcipe for certified transcript of record on appeal to the United States Supreme Court.

To the clerk of the above entitled court:

Please make and issue a certified transcript of the record on appeal to the Supreme Court of the United States in the above entitled cause consisting of the following:

1. Typewritten copy of indictment returned in the above entitled cause the 18th day of June, 1920.

2. Typewritten copy of record of arraignment of defendants Boze Yuginni and Cousin Boze Yuginni.

3. Typewritten copy of the demurrer filed by defendants to the indictment.

4. Typewritten copy of defendants' motion to quash the indictment.

5. Typewritten copy of the opinion of Hon. R. S. Bean in said cause filed the 13th day of July, 1920.

6. Typewritten copy of order and judgment of the above entitled court rendered July 13th, 1920, sustaining the defendants' demurrer and allowing defendants' motion to quash.

7. Typewritten copy of petition of plaintiff for writ of error.

8. Typewritten copy of plaintiff's assignment of errors.

9. Typewritten copy of order of the above entitled court allowing writ of error.

10. Typewritten copy of writ of error.

11. Typewritten copy of præcipe for certified transcript of record on appeal to the United States Supreme Court.

39 12. Original certificate of clerk of the District Court of the United States for the District of Oregon to transcript of record.

13. Original citation on appeal to the United States Supreme Court.

AUSTIN F. FLEGEL, Jr.,
Assistant United States Attorney.

UNITED STATES OF AMERICA,
District of Oregon.

Due, legal, and timely service of the within præcipe for certified transcript of record on appeal to the United States Supreme Court by the receipt by me of copy thereof is hereby acknowledged this 30 day of July, 1920, at Portland, Oregon.

BARNETT H. GOLDSTEIN,
Attorney for Defendants.

Filed July 30, 1920. G. H. Marsh, clerk.

40 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages numbered from 7 to 39, inclusive, constitute the transcript of record upon writ of error issued out of the Supreme Court of the United States to the United States District Court for the District of Oregon in the case in which the United States of America is plaintiff and plaintiff in error and Boze Yuginovich, indicted as Boze Yuginni,

and Boze Yuginnovich, indicted as Cousin Boze Yuginni, are defendants and defendants in error. That said transcript has been prepared in accordance with the praecipe for transcript filed by the assistant United States attorney for the District of Oregon, and is a true and complete transcript of the record and proceedings had in said court in said cause as designated by the said praecipe to be included therein, as the same appear of record and on file at my office and in my custody.

I further certify that I return, with the said transcript of record attached, the original writ of error issued in said cause and the original citation.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this 25th day of August, 1920.

[SEAL.]

G. H. MARSH,

*Clerk, United States District Court
for the District of Oregon.*

(Indorsement on cover.) File No. 27,880, Oregon D. C. U. S. Term No. 523. The United States of America, plaintiff in error, vs. Boze Yuginovich and Cousin Boze Yuginovich. Filed September 2d, 1920. File No. 27,880.



In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, PLAINTIFF in error, v. BOZE YUGINOVICH AND COUSIN BOZE Yuginovich.	}	No. 523.
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*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON.*

MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case and set it for hearing on February 28, 1921.

The defendants in error were indicted for a violation of certain provisions of the internal-revenue laws with respect to the manufacture of whisky. A demurrer to the indictment was sustained upon the ground that these provisions of the law were superseded by the national prohibition act (41 Stat., c. 83, p. 305). The question

is one as to which considerable confusion exists, and it is important to the administration of the law that there should be a speedy decision of it.

Respectfully submitted.

WILLIAM L. FRIERSON,
Solicitor General.

JANUARY, 1921.

